

**ENTERED**

February 08, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

LIBARDO TABOADA, *et al*,

Plaintiffs,

VS.

STATE FARM LLOYDS, *et al*,

Defendants.

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CIVIL ACTION NO. 2:18-CV-453

**ORDER ABATING CASE**


On January 10, 2019, Defendants timely filed their Verified Plea in Abatement (D.E. 5), pursuant to Texas Insurance Code § 542A.005(b). According to Texas law, an insurance defendant is entitled to abatement automatically without necessity of court order if the plaintiff does not file—on or before the eleventh day following the timely filing of an initial verified plea—an affidavit that controverts the claim that detailed notice of the claim was not given or was factually insufficient. That deadline passed on January 21, 2019.

Pursuant to this Court's Local Rules, the party responding to a request for relief has twenty-one days to respond before the motion is submitted for decision. Local Rule 7.3. That deadline passed on January 31, 2019. Plaintiffs have not filed a controverting affidavit or any other response to the plea in abatement. Pursuant to Local Rule 7.4, failure to respond is taken as a representation of no opposition to the relief sought.

Nonetheless, the Court has reviewed the plea in abatement on the merits and finds that it is well-taken. Plaintiffs' notice letter is factually conclusory regarding the property

damage claimed. The notice letter further does not assert that the calculation of attorney's fees has been made as required by statute.<sup>1</sup> For these reasons, the plea in abatement (D.E. 5) is GRANTED and the Court ORDERS that this action is abated until the 60<sup>th</sup> day after Plaintiffs give the detailed notice as required by statute. Plaintiffs are further ORDERED to file with the Court an advisory stating sufficient information for the Court to determine when appropriate notice in compliance with this Order has been given to Defendants so that this Court may determine the date on which abatement shall end. Plaintiffs' advisory must be filed on or before five (5) days after the notice is given to Defendants.

ORDERED this 8th day of February, 2019.

  
NELVA GONZALES RAMOS  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> This Court does not require the letter to state the number of hours or hourly rate used, but does require an affirmation that the amount set out in the letter was arrived at through the multiplication of hours by hourly rate as required by Chapter 542A.